

## Message Text

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ACTION IO-10

INFO OCT-01 ISO-00 IOE-00 EB-07 AF-06 ARA-06 EA-06 EUR-12

NEA-09 OIC-02 CU-02 AID-05 COME-00 TRSE-00 CIEP-01

OMB-01 SS-15 SP-02 NSC-05 L-02 H-02 PA-01 PRS-01

USIA-06 CIAE-00 INR-07 NSAE-00 CEA-01 STR-01 SIL-01

LAB-04 FRB-03 /119 W

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P 241455Z MAR 75

FM USMISSION USUN NY

TO SECSTATE WASHDC PRIORITY 9625

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E.O. 11652: N/A

TAGS: EINV UN

SUBJ: UN COMMISSION ON TRANSNATIONAL CORPORATIONS

1. FIFTH DAY OF SESSION CONSISTED OF INFORMAL MEETING OF COMMISSION IN MORNING, FOLLOWED BY SEPARATE WEO AND LDC CAUCUSES IN AFTERNOON.

2. MORNING SESSION OPENED WITH GENERAL STATEMENT BY CHAIRMAN BHATT, WHO OFFERED HIS SUMMARY AND COMMENTS IN THE WORK ON THE COMMISSION SO FAR. HE NOTED THE NEED OF LDCS FOR ASSISTANCE IN ESTABLISHING MACHINERY TO NEGOTIATE WITH TNCs AND ENFORCE WHATEVER AGREEMENTS ARE ENTERED INTO. TURNING TO THE MANDATE FOR THE COMMISSION, HE SAID IT WAS MAJOR TASK TO RECOMMEND PROGRAM OF WORK AND PROVIDE GUIDANCE TO CENTRE BY IDENTIFYING WHICH TASKS SHOULD BE TAKEN UP ON A PRIORITY BASIS. HE STATED THAT BINDING INTERNATIONAL AGREEMENTS ON SAME SUBJECTS COULD BE AIMED AT WITHOUT FURTHER INFORMATION, INCLUDING CERTAIN RESTRICTIVE BUSINESS PRACTICES, INFORMATION DISCLOSURE, TAXATION,

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AND NON-INTERFERENCE IN POLITICAL, SOCIAL AND CULTURAL

AFFAIRS. HE NOTED AS "ENCOURAGING" THE ANDEAN PROCESS IN DEALING WITH TNCS AND THAT IT WAS "CLEAR" THAT TNCS SHOULD IN ALL CASES BE SUBJECT TO EXCLUSIVE JURISDICTION OF COURTS OF HOST COUNTRIES.

3. FOLLOWING DISCUSSION PROMPTED BY CIRCULATION OF UK PAPER ON MODALITIES, (CONFERENCE ROOM PAPER NO. 1) WAS DIVERTED INTO SUBJECT OF MODALITIES, ESPECIALLY WHETHER THE EXPERTS TO BE UTILIZED BY THE COMMISSION WOULD BE CONSTITUTED AS A PERMANENT, STANDING GROUP OR CALLED UPON ON AN AD HOC BASIS WHEN NEEDED; AND WHETHER EXPERTS SHOULD BE CHOSEN ONLY AFTER PRIORITIES IN WORK PROGRAM HAD BEEN ESTABLISHED. LDCS CONTINUE TO FAVOR AD HOC APPROACH, VIEWING ROLE OF EXPERTS AS ONE OF TECHNICAL ADVISERS, RATHER THAN A PRESSURE GROUP WHICH MIGHT SEEK CONTROL OVER COMMISSION POLICIES. U.K. ONCE AGAIN DETAILED ITS COMPROMISE INTERPRETATION, SUGGESTING PARAS 3(B) AND (D) OF RES 1913 INDICATE AN AD HOC PROCEDURE, BUT THAT PARA 1(D) CLEARLY CALLS FOR A PERMANENT, STANDING GROUP. THIS DISCUSSION OF MODALITIES ENDED INCONCLUSIVELY. THERE WAS GENERAL AGREEMENT THAT EXPERTS WERE TO BE NO MORE THAN ADVISERS, WERE NOT TO MAKE POLICY DECISIONS, REPORT DIRECTLY TO ECOSOC OR PARTICIPATE IN ANY ACTUAL DRAFTING OF CODE. FURTHER DISCUSSION OF MODALITIES PUT OFF UNTIL AFTER PRIORITY OF WORK ESTABLISHED.

4. MEETING THEN TURNED TO DISCUSSION OF PRIORITIES OF WORK, FOCUSING ON CONFERENCE RM. PAPER NO. 2, DISTRIBUTED BY ARGENTINA. THIS DOCUMENT APPEARS TO BE WORD FOR WORD THE SAME AS ANNEX II, DOC. 9 OF THE THIRD PREPARATORY MEETING OF TNC WORKING GROUP OF INTERAMERICAN FOREIGN MINISTERS, WHICH MET IN WASHINGTON JAN. 13-17 1975. DOCUMENT WAS THEN THE LATEST DRAFT OF PRINCIPLES OF A CODE OF CONDUCT FOR TNCS. ARGENTINA, BRAZIL, AND ALGERIA PRESSED FOR IMMEDIATE CONSIDERATION OF CODE, WITH ARGENTINA AND BRAZIL SPECIFICALLY URGING USE OF ARGENTINE PAPER AS A BASIS FOR WORK. NO OTHER LDC EXPLICITLY ENDORSED ARGENTINE PAPER AS BASIS FOR WORK.  
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5. CHAIRMAN EMPHASIZED THAT EARLY DISCUSSION OF PROGRAM OF WORK SHOULD FOCUS ON PARA 7 OF RES 1913 RATHER THAN ARGENTINE PAPER WHICH DEALS ONLY WITH ONE ASPECT OF THE WORK PROGRAM (THE CODE OF CONDUCT). U.S. AND ITALY SUPPORTED THIS VIEW.

6. AT SUGGESTION OF BRAZIL AND OTHER 77 MEMBERS (AGAINST

DESIRE OF CHAIRMAN UK AND US) THE AFTERNOON MEETING WAS ELIMINATED IN ORDER PERMIT 77 CAUCUS. WEO GROUP THEN DECIDED TO MEET IN AFTERNOON, TOO.

7. BEFORE AFTERNOON CAUCUSES, US. DEL MET WITH CHAIRMAN AND FIGUERERO TO DISCUSS PRIORITIES OF WORK: USDEL NOTED THAT IT WAS INAPPROPRIATE AT THIS STAGE TO DISCUSS ACTUAL DRAFT LANGUAGE FOR A CODE, SUCH AS THAT SET FORTH IN ARGENTINE DOCUMENT. USDEL SAID THAT THE AREAS OF CONCERN INDICATED BY THE DOCUMENT SHOULD SERVE AS REFERENCE FOR AND POSSIBLE BASIS FOR STUDY BY THE COMMISSION (ALTHOUGH US WOULD REQUIRE MORE BALANCED LANGUAGE IF PAPER WERE TO SERVE LATER FUNCTION), BUT ONLY AS SUCH, RATHER THAN AS FORMULATIONS OF CODE PROVISIONS. ARGENTINE APPEARED TO BE IN AGREEMENT WITH THIS APPROACH, SO LONG AS HIS DOCUMENT WAS NOT DROPPED FROM VIEW ENTIRELY, BUT MIGHT BE ANNEXED SOMEWHERE. CHAIRMAN AGREED WITH THIS APPROACH, NOTING THAT FINAL CODE MIGHT BE 5 YEARS AWAY. USDEL PRESENTED TO FIGUERERO INFORMAL, UNOFFICIAL (DRAFT AT LUNCH) REFORMULATION OF ARGENTINE PRINCIPLES AS "AREAS OF CONCERN" REQUIREING STUDY (TEXT QUOTED PARA 13 BELOW) AS EXAMPLE OF KIND OF LANGUAGE WHICH US MIGHT FIND ACCEPTABLE. FIGUERERO INDICATED HE WOULD STUDY THESE NOTES.

8. BASED ON DECISION OF COMMISSION IN MORNING MEETING TO DEVOTE IMMEDIATE ATTENTION TO PROGRAM OF WORK, WEO AND 77 MET IN AFTERNOON TO DISCUSS ARGENTINE PAPER AND STRATEGY FOR MEETINGS NEXT WEEK. OUTCOME OF 77 MEETING IS NOT KNOWN, ALTHOUGH THIRD-HAND SOURCES INDICATE LDCS ARE FAR FROM UNANIMOUS IN SUPPORT OF ARGENTINE POSITION.  
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9. FOCUS OF WEO MEETING WAS THE NEED FOR AN ALTERNATIVE TO THE ARGENTINE PAPER IN ORDER TO AVOID BEING FORCED TO NEGOTIATE THE LANGUAGE. GERMANS ARE PREPARING SUCH A PAPER, DEALING WITH ALL FOUR ITEMS OF PARA 7, RES 1913 RATHER THAN JUST THE CODE (CANADA'S IDEA), AND LISTING SOME ISSUES OF CONCERN WHICH WE FEEL SHOULD BE STUDIED, PROBABLY AS AN ANNEX. WE MEET WITH THE GERMANS (AND BRITISH) SATURDAY AFTERNOON TO REVIEW THEIR DRAFT. THIS PAPER MAY THEN BE CIRCULATED ON MONDAY, FORMALLY OR INFORMALLY, DEPENDING UPON STATUS GIVEN TO ARGENTINE PAPER IN COMMISSION DELIBERATIONS AT THAT TIME.

10. SOLIDARITY OF OECD GROUP IS REASSURING. OPPOSITION TO ARGENTINE PAPER IS UNIVERSAL. IN ADDITION, IT A

APPEARS NO DELEGATION CURRENTLY SUPPORTS IMMEDIATE WORK ON DRAFTING CODE. IN BRIEF MORNING WEO CAUCUS, US MANAGED TO OBTAIN MORE COMPLETE EXPLANATION OF SWEDE POSITION. SWEDES SUPPORT INTERSESSIONAL GROUP TO WORK ON CODE. NEVERTHELESS, THEY CONCEDED THAT GROUP COULD WORK ON OTHER ISSUES TOO (IN RESPONSE TO OUR FIRM POSITION THAT WORK ON CODE MUST NOT PROCEED AHEAD OF OTHER ITEMS IN PARA 7), ALTHOUGH THEY STILL FEEL CODE SHOULD RECEIVE MOST ATTENTION. THEY ALSO AGREED THAT WORK ON CODE SHOULD BE PRELIMINARY--THE MODALITIES OF THE CODE AND GENERAL CONCERNS TO WHICH IT WOULD GIVE EXPRESSION--RATHER THAN ACTUAL DRAFTING.

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11. EC IS ENDORSING PROPOSAL THAT CENTER DO PRELIMINARY RESEARCH WORK FOR CODE. EC HAD AGREED, BUT FAILED TO ANNOUNCE TO COMMISSION ON FRIDAY, THAT CENTER IN DOING SUCH WORK SHOULD LOOK AT (A) THE RECOMMENDATIONS OF THE EMINENT PERSONS REPORT; (B) THE COMMENTS OF GOVERNMENTS ON THE REPORT; AND (C) A REVIEW OF RELEVANT RESEARCH DONE ELSEWHERE.

12. RAPPORTEUR WYNDHAM IS GEARING UP TO BEING DRAFTING

REPORT OF COMMISSION SESSION. ACCORDING TO UK, AT LUNCHEON WITH VARIOUS DELEGATIONS (US NOT INCLUDED) FRIDAY, IT WAS AGREED THAT REPORT WOULD BE IN TWO PARTS, THE FIRST PRESENTING A SUMMARY RECORD OF VIEWS OF GOVERNMENTS EXPRESSED DURING THE COMMISSION SESSION (THE SECRETARIAT IS NOT PREPARING AN OFFICIAL SUMMARY RECORD, THE SECOND SETTING FORTH THE SUBSTANTIVE DECISIONS TAKEN BY THE COMMISSION WITH RESPECT TO PROGRAM OF WORK AND MODALITIES. WYNDHAM IS PREPARING A DRAFT OUTLINE OF THE REPORT FOR CIRCULATION TO DELEGATIONS ON MONDAY. IN TELECON SATURDAY MORNING, HE SOLICITED US REACTION TO THIS PLAN, INDICATED THAT HE PLANS TO LIMITED OFFICIAL USE

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LIST ISSUES UNDER PART TWO WHICH ALL DELEGATIONS AGREE WILL HAVE TO BE RESOLVED BY COMMISSION DURING THIS SESSION, THEREBY PROVIDING STRUCTURE FOR COMMISSION DELIBERATIONS NEXT WEEK. WE CONCURRED IN THIS APPROACH, EMPHASIZING ONLY THAT HE SHOULD BASE PRESENTATION OF PROGRAM OF WORK ON PARA. 7, RES. 1913.

13. FOLLOWING IS USDEL REFORMULATION OF FIGUERERO'S "AREAS OF CONCERN." WE EMPHASIZED THAT THIS DID NOT REPRESENT USG POSITION, BUT RATHER INFORMAL ATTEMPT BY USDEL TO IDENTIFY BROAD FRAMEWORK IN WHICH OUR RESPECTIVE POSITIONS MIGHT BE RECONCILED:

QUOTE:

THE CENTER SHOULD COLLECT AND ORGANIZE IN USUABLE FORM AVAILABLE INFORMATION, INCLUDING STUDIES, AND SHOULD FORMULATE RESEARCH PROPOSALS ON THE FOLLOWING MATTERS OF PRIORITY CONCERN TO THE WORK PROGRAM OF THE COMMISSION:

(1) EFFECTS ON ECONOMIC GROWTH AND DEVELOPMENT OF ACTIVITIES OF TNCs, INCLUDING POSITIVE AND NEGATIVE IMPACTS ON SUCH MATTERS AS PRODUCTIVITY, CAPITAL FORMATION, EMPLOYMENT, LABOR CONDITIONS, BALANCE OF PAYMENTS INCLUDING EXPORTS AND IMPORT SUBSTITUTIONS, CREATION OF ECONOMIC INFRASTRUCTURE, AND TECHNICAL CADRES, MONETARY AND FISCAL STRUCTURES;

(2) COMPLIANCE WITH LAWS OF HOST GOVERNMENT LEGISLATION AND POLICY GUIDELINES OF HOST GOVERNMENTS REGULATING "POLITICAL" ACTIVITIES OF TRANSNATIONAL CORPORATIONS, INCLUDING FINANCIAL OR OTHER PARTICIPATION IN ELECTORAL CAMPAIGNS AND LOBBYING ADVERTISING OR OTHER ACTIONS INTENDED TO INFLUENCE LEGISLATION OR PUBLIC POLICY AFFECTING THEIR ACTIVITIES; NOTING DISTINCTIONS MADE BETWEEN FOREIGN AND DOMESTIC

BUSINESS. END QUOTE.

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